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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

CITY OF LIVINGSTON,

Petitioner,

v.

WORKERS' COMPENSATION APPEALS
BOARD and MARIA MADRID,

Respondents.

F044303

(WCAB Nos. FRE 198195
& FRE 198196)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of review.

Adelson, Testan, Brundo & Popalardo and James A. Dubbels, for Petitioner.

No appearance by Respondent Workers' Compensation Appeals Board.

The Goldberg Law Firm and Michael Goldberg, for Respondent, Maria Madrid.

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The City of Livingston (City) petitions for a writ of review to determine the lawfulness of the decision of the Workers' Compensation Appeals Board (WCAB).

*Before Harris, Acting P.J., Buckley, J., and Wiseman, J.

(Lab. Code,¹ § 5950; Cal. Rules of Court, rule 57.) The City believes the WCAB erroneously excluded defense witnesses, based its decision on insufficient evidence, and failed to analyze whether a psychological injury was barred as a “lawful, non-discriminatory, good faith personnel action.” (§ 3208.3.) We will deny the petition.

BACKGROUND

On the morning of April 6, 2001, Maria Madrid (Madrid) was working as a dispatcher for the City’s police department when she received a call from a local store employer explaining that an employee reported he was being held hostage. Madrid dispatched officer Sharon Silva to the scene and informed their superior, Commander Daniel Shambaugh. Commander Shambaugh told Madrid that he “would be right there.” A California Highway Patrol (CHP) officer was in the building and voluntarily left to assist Officer Silva.

At Officer Silva’s request, Madrid called the county sheriff’s department for additional backup. Commander Shambaugh, however, instructed Madrid to cancel the sheriff backup and said he was not going to assist after he learned the CHP officer was en route. Commander Shambaugh nevertheless arrived to the scene after Officer Silva and the CHP officer learned it was not a hostage situation.

Madrid and Officer Silva were very disturbed that the commander had cancelled their backup call for sheriff assistance. They perceived the commander as having a history of sexual harassment and felt he placed Officer Silva’s life in danger because she was a woman. They also believed his decision was motivated in part by Officer Silva’s recent decision not to work as a sergeant, a position entailing more responsibility without an increase in salary.

Officer Silva filed a grievance with the City the next day. That morning, the City’s Chief of Police, William Eldridge, met with Madrid and Commander Shambaugh

¹ Further statutory references are to the Labor Code.

to find out what made Officer Silva so upset. Commander Shambaugh denied Madrid's request to have a union representative present during the discussion. Madrid felt the Chief thought she was lying to him. Following the meeting, Madrid became "physically and emotionally sick," filed a workers' compensation claim for injury to her psyche, and was off work for almost three months until June 29, 2001.

Following disability hearings in November 2002 and February 2003, a workers' compensation law judge (WCJ) granted Madrid's motion to exclude the City's defense testimony from Commander Shambaugh and Chief Eldridge. In July 2003, the WCJ found Madrid "sustained industrial injury on 4/6/01 as alleged." In addition to temporary disability, the WCJ awarded Madrid a 28 percent level of permanent disability equivalent to \$170 payable for 113.75 weeks. On October 1, 2003, the WCAB denied the City's subsequent petition for reconsideration by adopting and incorporating the reasoning from the WCJ's report and recommendation.

DISCUSSION²

The WCAB's findings and award must be upheld if supported by substantial evidence in light of the entire record. (§ 5952; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 233.) This court may not reweigh evidence or decide disputed facts. (*Id.* at p. 233.) Although the workers' compensation laws are to be liberally construed with the purpose of extending benefits to industrially injured workers (§ 3202), we are not bound to accept factual findings that are unreasonable, illogical, arbitrary, improbable, or inequitable considering the entire record and overall statutory scheme. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd., supra*, 16 Cal.App.4th at p. 233; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246, 254.)

² We address the City's contentions in reverse order from that presented in the Petition for Writ of Review.

1. ***Excluded Testimony***

The City contends the WCAB erred in excluding the testimony of Commander Shambaugh and Chief Eldridge. The propriety of a discovery sanction is subject to an abuse of discretion standard. (*People v. Ayala* (2000) 23 Cal.4th 225, 299; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1176.) “In exercising his discretion in this area, the trial judge should try to achieve an appropriate balance between the public policy favoring liberality of pre-trial discovery and the specific policy applicable to workers’ compensation cases that they shall be adjudicated expeditiously, inexpensively and without encumbrance of any character.” (*Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111, 115.)

In reaching the decision to exclude the City’s defense testimony, the WCJ recalled that on April 17, 2001, Madrid made a written discovery request to the City for all statements, films and videos. At an August 5, 2002, mandatory settlement conference (MSC), Madrid orally repeated her demand for the City to comply with the discovery request. At the MSC, the City listed as defense witnesses both Commander Shambaugh and Chief Eldridge.

At the first day of trial on November 12, 2002, Commander Shambaugh testified that he had given a number of recorded statements during the City’s initial investigation. Commander Shambaugh did not know anything about Madrid’s discovery request. Not having received copies of the recorded statements, Madrid requested to exclude the City’s two named defense witnesses from the WCAB proceedings; the WCJ instead issued a written order to the City to serve Madrid with all statements made by its defense witnesses within 20 days.

Close to three months later on February 3, 2003, Madrid advised the WCJ that she only received the statements on January 30, 2003, and that her attorney had not had time to study them. Madrid also claimed the City failed to release other statements such as those made by Officer Silva. Officer Silva testified that she had submitted a 14 or 15

page written statement during the City's internal investigation describing her version of the events. Madrid then renewed her request to exclude the City's witnesses.

In the report and recommendation to the WCAB, the WCJ explained that he granted Madrid's motion to exclude the testimony because:

"The city's delayed and incomplete compliance with the applicant's request for witness statements violates applicant's rights under the California Workers' Compensation Law to reasonable discovery for purposes of attempting to prove a contested claim. The city's much delayed and only partial compliance with the WCAB order to produce is egregious."

Section 5502, subdivision (e)(3)³ provides:

"If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference."

The Legislature enacted the early discovery procedures " 'to minimize delays and efficiently expedite case resolution by making sure parties are prepared for hearing.' " (*Telles Transport Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1164.) "The purpose of the disclosure requirement in section 5502 is obvious: to guarantee a productive dialogue leading, if not to expeditious resolution of the whole dispute, to thorough and accurate framing of the stipulations and issues for hearing." (*Ibid.*, internal quotations marks omitted.)

Given the Legislative intent to minimize delay in workers' compensation proceedings, we agree with the WCAB's determination that the City's failure to provide discoverable information within its possession until well after the close of discovery and

³ Legislation enacted in 2002 renumbered the provision from subdivision (d)(3) to subdivision (e)(3). (Stats. 2002, c. 866 (A.B.486).)

in defiance of the WCAB's order was egregious. The City unconvincingly argues that Madrid was not prejudiced because she possessed a copy of her own 18-page grievance and the City's response summarizing the events. The requested information, however, contained tape-recorded interviews of Commander Shambaugh and Chief Eldridge. Providing their recorded statements only days before trial clearly prejudiced Madrid's case by inhibiting her ability to prepare for hearing. As the WCJ reasoned:

“It is agreed, as noted by [the City] in its petition, that exclusion of a witness is not an absolute right and that each case must be assessed on its own merits. Here, the [City's] conduct in not disclosing witness statements early on while knowing such statements were made, and untimely serving incomplete witness statements only after board order, was extremely prejudicial to [Madrid's] right to reasonable discovery in attempting to prove a contested claim and egregiously non-compliant with board rules, policies, and orders.”

We agree and find no abuse of discretion in excluding the City's defense testimony.

2. *Substantial Evidence*

The City also contends the WCAB's decision is unsupported by substantial evidence because the medical report of Madrid's examining psychiatrist, Alberto G. Lopez, M.D., contradicted Madrid's testimony at hearing. The City points to specific testimony in the record in which Madrid summarizes her current job duties after returning to work and her ability to perform those duties.

Immediately after stating her abilities, however, Madrid further testified that she agreed with Dr. Lopez's characterization of her inabilities and limitations by referencing a specific page in Dr. Lopez's report. Madrid reinforced Dr. Lopez's opinion that Madrid suffered from a "residual permanent psychiatric disability." Dr. Lopez found that while Madrid was previously free from any previous psychiatric disorder or disability, she continued to suffer following the incident slight levels of poor memory and concentration, sleep deprivation, fatigue, guardedness, depression, crying, irritability, and anger. Pursuant to Lopez's diagnosis, the WCJ awarded Madrid a 28 percent disability award as determined by the Department of Industrial Relations' disability evaluator. It is well established that " 'the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence.' " (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378.)

3. *Good Faith Personnel Action*

"In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." (§ 3208.3, subd. (b)(1).) "It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division." (§ 3208.3, subd. (c).) "No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue." (§ 3208.3, subd. (h).)

The City contends the WCAB failed to conduct a multilevel analysis to determine whether Madrid's psychological injury was caused by the City's "lawful, non-discriminatory, good faith personnel action." (*Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241 (en banc).) Adopting the WCJ's report and recommendation, the WCAB found the defense inapplicable as resting on the excluded testimonies of Chief

Eldridge and Commander Shambaugh.⁴ We agree that lacking any testimonial evidence as to whether the City's conduct resulted from a good faith personnel action, no such written analysis was required.

DISPOSITION

The Petition for Writ of Review and respondent's request for attorney fees are denied. This opinion is final forthwith as to this court.

⁴ The WCAB also found the issue waived for not raising the defense below. However, the WCAB has previously found it unnecessary to expressly raise the issue of a good faith personnel action in determining whether a psychological injury is compensable. (*Carper v. Workers Comp. Appeals Bd.* (1998) 63 Cal.Comp.Cases 1064; cf. *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1426 [WCAB must take judicial notice of a statutory presumption and parties therefore need not expressly raise it as an issue].)